



## ADA & Accommodations Policy

In accordance with the Rehabilitation Act of 1973, Section 504, and the 1990 Americans with Disabilities Act, including changes made by the ADA Amendments Act of 2008 which became effective on January 1, 2009, no otherwise qualified person with a disability shall, solely by reason of the individual's disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any City program, service, or activity.

The Equal Opportunity Director or designee will work to ensure that in every public area there is a posted notice that states individuals have a right to file a complaint with the Equal Opportunity Department if they believe their rights have been violated by the City based upon a disability.

The Equal Opportunity Department Director or designee serves as the City's ADA Coordinator and will work to ensure the City's compliance with this policy. The Equal Opportunity Department Director or designee will serve as the City's liaison and render assistance to persons with disabilities or organizations advocating the needs of persons with disabilities. The Equal Opportunity Director or designee, shall create additional administrative procedures to help carry out this policy.

### Covered Individuals

The City, in conformance with Title I of the Americans with Disabilities Act (ADA), requires the fair treatment of qualified individuals with disabilities. The ADA prohibits employment discrimination against qualified disabled individuals, while ensuring that employers can continue to require all applicants and employees, including those with disabilities, to be able to perform the essential, non-marginal functions of the job in question.

Title II of the ADA applies to all state and local governments and all departments, agencies, special purpose districts, and other instrumentalities of state or local government ("public entities"). It applies to all programs, services, or activities of public entities, from adoption services to zoning regulation. Title II entities that contract with other entities to provide public services (such as non-profit organizations that operate drug treatment programs or convenience stores that sell state lottery tickets) also have an obligation to ensure that their contractors do not discriminate against people with disabilities.

### Definitions:

*Note:* This section is intended to provide, so far as possible, a "plain English" explanation of relevant legal terms that are defined in the Rehabilitation Act (29 U.S.C. § 705) and the Americans with Disabilities Act (42 U.S.C. § 12111). This section is not intended to change the meanings assigned to these statutory terms. Persons seeking further explanation of these terms should consult the Equal Employment Opportunity Commission's "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630.

- A. **Disability** — The term *disability* means, with respect to an individual:  
(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;(B) a record of such an impairment; or(C) being regarded as having such an impairment
- B. **Qualified Individual with a Disability** - A person who has a *disability* is a *qualified individual with a disability* if he or she is able to perform the *essential functions* of his or her job with or without a *reasonable accommodation*.
- C. **Major Life Activity** – major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- D. **Major Bodily Functions** - a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- E. **Regarded as Having Such an Impairment** - An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity; shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.
- F. **Reasonable Accommodation** — An *accommodation* is a change in the City's work rules, facilities, or conditions which enable a *qualified individual with a disability* to apply for a job, perform the *essential functions* of a job, or enjoy equal access to the benefits and privileges of employment. An *accommodation* is *reasonable* if it is effective in producing the desired result, and balances the needs of the applicant or employee and the City.
- G. **Undue Hardship** — If a specific accommodation causes undue hardship, the City does not have to provide that particular accommodation. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation and the impact of the reasonable accommodation on the DOL's operations.
- H. **Interactive Process** — An *interactive process* is a flexible process through which the City and the employee or applicant with a disability, discuss the request for accommodation in a good faith effort to identify the employee's or applicant's precise limitations and reasonable accommodations.
- I. **Essential Functions** — *Essential functions* are the fundamental job duties of the employment position the employee with a disability holds or

the applicant with a disability seeks. A function can be essential if, among other things, the position exists specifically to perform that function, there are a limited number of other employees who could perform the function if it were assigned to them, or the function is specialized and the incumbent is hired based on his or her ability to perform it.

- J. **Extenuating Circumstances** — *Extenuating circumstances* are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the necessary accommodation will be extended as reasonably necessary. Examples of extenuating circumstances may include: waiting to receive medical documentation from a third party; or waiting for adaptive equipment to assist the employee; or unforeseen circumstances caused by a delay in the mail system.

### Responsibilities of Participants in the Reasonable Accommodation Process

#### A. **The Equal Opportunity Director or designee**

The OEO Director or designee shall be responsible for:

1. Providing direction and guidance on the implementation of these procedures;
2. Participating and facilitating, as appropriate, in meetings with relevant department personnel regarding reasonable accommodation requests;
3. Working with the Human Resources Department, Risk Management Department and City Attorney's Office in reviewing all proposed decisions to approve/deny reasonable accommodation requests or to provide alternative accommodation and to ensure compliance with policies and procedures;
4. Maintaining summary statistics on accommodations by the City.

#### B. **Human Resources Director or designee**

The Human Resources Director or designee shall be responsible for:

1. Consulting with and advising supervisors and other appropriate officials throughout the accommodation request process to help determine whether requests for accommodations should be granted or denied;
2. Facilitating the interactive process by bringing together supervisor, employee, and other appropriate parties;
3. Consulting with the Risk Management Director or designee, City Attorney's Office and other appropriate officials in determining:
  - A. Whether the requestor is a qualified individual with a disability;
  - B. Whether to grant, deny, or provide an alternative to the requested accommodation; and

- C. Whether, in the case of a denial, the requested accommodation poses an undue hardship.
4. Identifying when accommodation requests are complicated by performance, conduct, or leave issues, or a worker's compensation claim; or when an accommodation involves reallocation of tasks, revision of standards, or other adjustment ordinarily accomplished with the assistance of human resource staff;
5. Maintaining records submitted by employees or applicants in connection with accommodation requests, in a manner that complies with the confidentiality requirements of the Rehabilitation Act and the Privacy Act of 1974, 5 U.S.C. § 552a, as amended.
6. Notification to all parties and officials on resolution of the reasonable accommodation request

### C. Risk Management Director or designee

The Risk Management Director or designee agency shall be responsible for:

1. Consulting with and advising supervisors and other appropriate officials throughout the accommodation request process to help determine whether requests for accommodations should be granted or denied;
2. Participating in the interactive process with appropriate parties;
3. In consultation with Employee Health Services, providing a medical determination on all requests;
4. Consulting with the Human Resources Director or designee, City Attorney's Office and other appropriate officials in determining:
  - A. Whether the requestor is a qualified individual with a disability;
  - B. Whether to grant, deny, or provide an alternative to the requested accommodation; and
  - C. Whether, in the case of a denial, the requested accommodation poses an undue hardship.
5. Identifying when accommodation requests are complicated by worker's compensation claim or other medical considerations;
6. Maintaining records submitted by employees or applicants in connection with accommodation requests, in a manner that complies with the confidentiality requirements of the Rehabilitation Act and the Privacy Act of 1974, 5 U.S.C. § 552a, as amended.

### D. Supervisors

The immediate supervisor of an employee who requests an accommodation shall be responsible for:

1. Participating in the interactive process when the employee requests a reasonable accommodation;
2. Reporting all requests for disability accommodation to the Equal Opportunity Director;
3. Documenting requests for accommodation and the action taken.
4. Even in the absence of receiving a written request, the supervisor should acknowledge and begin to act on an oral request for

reasonable accommodation and advise the employee to contact the Equal Opportunity Director to document the request.

## Requesting an Accommodation and Understanding the Interactive Process

### A. **Employees with Disabilities**

To request a reasonable accommodation for a disability, an employee should take the following steps:

1. The employee should make the request orally or in writing personally, or through a family member, friend, health professional or other representative, to his or her immediate supervisor or the Equal Opportunity Director. If the request is made to someone other than the immediate supervisor, that person must promptly notify the immediate supervisor of the request. The employee does not need to use the words, "reasonable accommodation," but may simply state in plain English that s/he needs an adjustment or change at work; or in the application process due to the nature of his/her disability.
2. If an accommodation is needed to participate in a specific agency activity, the accommodation needs to occur in sufficient time to allow the employee requesting the accommodation to participate in the activity.
3. Within five (5) business days after making the request, the employee must complete and submit a **Reasonable Accommodation Request Form** to the Equal Opportunity Director.
4. An employee who requests an accommodation must provide information regarding:
  - A. The nature, extent, and duration of the disability;
  - B. How the disability impairs the employee's ability to perform the essential functions of his or her job or to enjoy equal access to the benefits and privileges of employment; and
  - C. How the requested accommodation or any alternative accommodation would allow him or her to perform the essential functions of his or her job, or to enjoy the benefits and privileges of the job.
5. In cases where the nature of the disability and the need for an accommodation are not obvious, or where the individual has not already provided the City with sufficient information to substantiate that s/he has a disability and needs an accommodation, then the employee shall promptly submit a limited medical release form and medical documentation to support the accommodation request. **(The Risk Management Department will provide additional guidance during the process.)**
6. This information should generally be provided to the supervisor; however, where the employee has concerns regarding such disclosure, the limited medical release form and the medical documentation may be provided directly to the Risk Management Department.

### B. **Applicants with Disabilities**

To request a reasonable accommodation to participate in the application process, an applicant should take the following steps:

1. The applicant should make the request orally or in writing personally, or through a representative, to the Equal Opportunity Director or other contact person listed on the vacancy announcement. If the request is made to someone other than the Equal Opportunity

- Director or other contact person listed on the vacancy announcement, that person must promptly notify the Equal Opportunity Director or other contact person of the request.
2. **Within five (5) business days after making the request, the applicant must complete and submit to the** Equal Opportunity Director or designee a **Reasonable Accommodation Request Form**. The Equal Opportunity Director will send the request to the Human Resources Director and appropriate parties for review. If the applicant with disability requires assistance with completing the form, the staff member receiving the request will provide the required assistance.
  3. An applicant who requests an accommodation must provide information regarding:
    - a. The nature, extent, and duration of the disability;
    - b. How the disability impairs the applicant's ability to perform the essential functions of his or her job or to enjoy equal access to the benefits and privileges of employment; and
    - c. How the requested accommodation or any alternative accommodation would allow the applicant to perform the essential functions of his or her job, or to enjoy the benefits and privileges of the job.
  4. Immediately after an applicant requests an accommodation, the Human Resources Director or designee shall decide whether to grant or deny the request or to offer an alternative accommodation.
  5. In cases where the nature of the disability and the need for an accommodation are not obvious, or where the individual has not already provided the agency with sufficient information to substantiate that s/he has a disability and needs an accommodation, then the applicant shall promptly submit a limited medical release form and medical documentation to support the accommodation request.
  6. The accommodation needs to occur in sufficient time to allow the applicant to participate in the application process.

### C. **Building Facility Accommodation Requests**

- A. A citizen or employee shall make such requests directly to the Equal Opportunity Director utilizing the **Reasonable Accommodation Request Form**. The Equal Opportunity Director or designee shall send the request to the lead building official for review. The Equal Opportunity Director may work with the City Attorney's Office, Facilities Management, Lead Building Official and other appropriate parties.
- B. The lead building official shall notify the citizen or employee of his or her decision and provide the Equal Opportunity Director with a copy of the record.

### **Requesting for Medical Documentation to Substantiate a Claim of Disability or Need for Accommodation:**

The City has a right to inquire into an employee's medical condition in order to determine whether an accommodation is appropriate. The City

may not request medical information where both the disability and need for reasonable accommodation are obvious or where the individual has already provided sufficient information to substantiate that s/he has a disability and needs an accommodation.

- A. If the Risk Management Director or designee determines that medical documentation is necessary, s/he shall instruct the employee to execute and provide a limited medical release form authorizing the City to review the documentation. The limited medical release form will be provided by the Risk Management Director or designee.
- B. The employee shall promptly provide documentation prepared by a licensed medical professional explaining:
  - 1. the nature, extent, and duration of the disability;
  - 2. how the disability affects the employee's ability to perform the essential functions of his or her job or limits his or her ability to enjoy the benefits and privileges of the job; and (3) how the requested accommodation will allow the employee to perform the essential functions of his or her job, or to enjoy the benefits and privileges of the job.
- C. Costs related to providing medical documentation in support of the reasonable accommodation request are to be borne by the individual requesting the accommodation.
- D. An employee's failure to comply with his or her responsibilities under this section may constitute a failure to participate in good faith in the interactive process and may be a legitimate ground for denying the reasonable accommodation request.

#### **Disability Discrimination Complaints:**

- A. Any person who wishes to file a discrimination complaint based on a disability, should refer to the Equal Opportunity Complaint Policy.

#### **Access and Compliance**

To ensure compliance in accordance with Section 504 of the Rehabilitation Act of 1973 and the ADA, the Equal Opportunity Department Director shall work with the appropriate City departments in conducting "self-evaluations" of City buildings, services, programs, and activities pursuant to federal regulations. The Equal Opportunity Department Director shall be responsible for coordinating with other affected City departments planning implementation dates for a "Implementation/Transition Plan" which lists access barriers and dates for corrective action.

The Equal Opportunity Department Director will also assist all departments that are required by the federal or state governments to submit a disability plan.

Monitoring and Reporting:

The Office of Equal Opportunity, in consultation with Human Resources, Risk Management and the City Attorney's Office shall maintain summary statistics on accommodations by the City including providing statistical information on the number, nature, and disposition of accommodation requests.

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